

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DOROTHY TRUEBLOOD,

Plaintiff,

v.

VALLEY CITIES COUNSELING
AND CONSULTATION, et al.,

Defendants.

CASE NO. C23-0269JLR

ORDER

REDACTED

I. INTRODUCTION

Before the court are (1) Plaintiff Dorothy Trueblood's motion for partial summary judgment, and (2) Defendant Valley Cities Counseling and Consultation's ("VCCC") motion for summary judgment. (Pl. MSJ (Dkt. # 16); Def. MSJ (Dkt. # 19); *see also* Pl. Reply (Dkt. # 28); Def. Reply (Dkt. # 26).) Each party opposes the other's motion. (Pl.

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1 Resp. (Dkt. # 24)¹; Def. Resp. (Dkt. # 22).) The court has considered the motions, the
 2 parties' submissions in support of and in opposition to the motions, the relevant portions
 3 of the record, and the governing law. Being fully advised,² the court DENIES Ms.
 4 Trueblood's motion for partial summary judgment and GRANTS VCCC's motion for
 5 summary judgment.

6 II. BACKGROUND

7 This case arises out of Ms. Trueblood's employment at VCCC, a nonprofit
 8 counseling and treatment center that serves vulnerable members of the community—
 9 including transgender youth. In 2022, Ms. Trueblood's religious convictions prompted
 10 her to request workplace accommodations related to the use of preferred pronouns.³
 11 VCCC terminated Ms. Trueblood's employment after determining that some of her
 12 requests would have posed an undue hardship upon VCCC's particular business, and this
 13 lawsuit followed. Below, the court sets forth the relevant factual and procedural history
 14 before turning to the merits.

16 ¹ Ms. Trueblood filed her opposition brief one day beyond the July 19, 2024 deadline.
 17 See Local Rules W.D. Wash. LCR 7(d)(4) (requiring summary judgment responses to "be filed
 18 and received by the moving party no later than 21 days after the filing date of the motion").
 19 Nevertheless, the court exercises its discretion to consider Ms. Trueblood's untimely response
 brief. See, e.g., *Protigent, Inc. v. Gustafson-Feis*, No. C20-1551KKE, 2023 WL 8089169, at *1
 (W.D. Wash. Nov. 21, 2023) ("It is within the [c]ourt's discretion to consider an untimely
 response.").

20 ² Both parties request oral argument (Pl. MSJ at 1; Def. MSJ at 1), but the court
 determines that oral argument would not aid in its disposition of the motions, see Local Rules
 W.D. Wash. LCR 7(b)(4).

21 ³ The term "preferred" is consistent with the parties' briefing and the record in this case.
 22 The court does not intend to imply that any transgender individual's pronouns are merely
 suggested, optional, or anything less than inherent to one's identity.

A. The Parties

Ms. Trueblood is a Christian woman who worked at VCCC for just over a decade, from early 2012 to mid-2022. (*See* 1st Morse Decl. (Dkt. # 20) ¶ 2, Ex. 1 (“Pl. Dep.”) at 164:12-15; Tribbett Decl. (Dkt. # 18)⁴ ¶ 3, Ex. 1 (“Personnel Files”) at 336-37; Tribbett Decl. ¶ 13, Ex. 18 (“Termination Letter”) at 500.)

VCCC is a 501(c)(3) nonprofit behavioral healthcare provider that operates 12 clinic locations throughout King and Pierce County. (Henson Decl. (Dkt. # 21) ¶ 2; *see also* Tribbett Decl. ¶ 4, Ex. 9 (“Manual”) at 403 (identifying VCCC’s “vision” as “providing integrated, quality and recovery-oriented behavioral health services to achieve healthy and compassionate communities”).) VCCC provides “a wide spectrum of health services,”

including but not limited to: mental health services (for example, depression anxiety, bipolar disorder, and gender dysphoria); psychiatric care services; substance use care services (inpatient and residential); . . . medication assisted services (to assist those with opioid addiction to access medication to help treat their condition); a mobile clinic that provides behavioral health services to those in rural communities in King County; and assistance to veterans with physical and psychological challenges.

(Henson Decl. ¶ 3.) In addition, VCCC “provides outreach services to homes, schools, jails, hospitals, people living on the streets, shelters, nursing homes, and other community spaces.” (*Id.*) VCCC “is open to all members of the community,” and individuals can obtain its services by “walk[ing] into any of its 12 locations” or by calling its 24-hour crisis hotline. (*Id.*)

⁴ The court refers to the pages numbers in the CM/ECF header when citing to this declaration and the exhibits attached to it.

1 In partnership with the Washington State Health Care Authority, VCCC also
 2 operates a Wraparound with Intensive Services (“WISe”) Program. (*Id.* ¶ 4.) The WISe
 3 Program is a youth-oriented approach for helping children and their families with
 4 intensive mental healthcare in both home and community settings based on
 5 individualized need. (*Id.*) WISe is available to youth aged 20 or younger who are
 6 eligible for coverage under Washington Apple Health and meet certain medical necessity
 7 criteria.⁵ (*Id.*) Youth clients in the WISe Program “have intensive and complex
 8 behavioral health issues,” some of which “relate to sexual orientation and gender
 9 identity.” (*Id.* ¶ 12.) For example, “[s]ometimes the youth is experiencing distress
 10 because their parent is unwilling to recognize their gender identity or refuses to use their
 11 preferred pronouns,” which “can be extremely harmful to the client.” (*Id.*)

12 New youth clients enter the WISe Program by completing an intake process with a
 13 mental health professional and a peer counselor and/or parent partner. (*See* 1st Morse
 14 Decl. ¶ 4, Ex. 3 (“██████ Dep.”) at 70:3-10.) “Peer counselors provide assistance and
 15 support to the youth,” offering guidance “based on the peer counselor’s own life
 16 experiences utilizing behavioral health services.” (Henson Decl. ¶ 5.) Parent partners
 17 draw “from their own experience to navigate systems and assist clients and their
 18 families,” meeting with the youth, their parents, and other community partners as needed.
 19 (*Id.*) In general, parent partners are assigned to cases based on employee capacity at the

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 22 ⁵ Washington Apple Health “is Washington[’s] version of Medicaid for low income individuals and families.” (Henson Decl. ¶ 4.) *See generally* WAC 182-505-0210.

1 time of intake. (██████ Dep. at 31:4-6.) At all times, the client remains the youth—not
2 the parent. (Henson Decl. ¶ 6; Pl. Dep. 13:6-18.)

3 VCCC maintains several internal policies that govern its services and workplace.
4 (Henson Decl. ¶¶ 7-9.) Its Compliance and Ethics Policy requires “deliver[y] of services
5 in an accessible and non-discriminatory manner” that “meet[s] the needs of clients of
6 differing: gender, race, religion, color, national origin, . . . veteran status, sexual
7 orientation, age, marital status, ancestry, [and] political ideology,” among other protected
8 characteristics. (*Id.* ¶ 7, Ex. A (“C&E Policy”) at 1.) VCCC’s Cultural Competence
9 Standards guide the service of clients from diverse backgrounds, requiring those services
10 to “be culturally competent and individualized to best meet [clients’] own personal
11 mental health needs.” (*Id.* ¶ 8, Ex. B (“CCS Policy”) at 1.) “Care plans shall coordinate
12 mental health needs of the individual within the client’s defined family (where
13 appropriate and with [the] client’s consent).” (CCS Policy at 1.) VCCC also maintains a
14 policy that requires employee email signatures to follow a standard template, but that
15 designates personal pronouns as “[o]ptional email signature additions.” (Tribbett Decl.
16 ¶ 4, Ex. 5 at 382.) VCCC’s Staff Principles require employees to “[d]emonstrate a
17 commitment to [VCCC’s] mission, values, goals, principles, procedures and strategic
18 plan”; “[d]emonstrate a working understanding of and adherence to [VCCC] policies and
19 procedures”; “[r]espect client needs and preferences”; “[d]emonstrate collegiality,
20 flexibility, and respect for all co-workers”; and “[e]nsure staff feel empowered, [and]
21 respected.” (Henson Decl. ¶ 9, Ex. C (“Staff Principles”).)

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1 VCCC hired Ms. Trueblood as a WISE Program parent partner on January 23,
2 2012. (Personnel Files at 336-37; *see also* Pl. Dep. at 13:19-23.) Upon hire, Ms.
3 Trueblood received and signed a copy of VCCC's Staff Principles, acknowledging they
4 would govern her work and conduct at VCCC. (Staff Principles; Pl. Dep. at
5 14:16-15:25.) Over time, Ms. Trueblood received generally positive performance
6 reviews that indicated she was consistently meeting VCCC's expectations overall. (*See*
7 Personnel Files at 4-76.) Ms. Trueblood openly expressed her Christian faith at VCCC
8 and felt that VCCC treated her faith inclusively throughout her tenure there—until she
9 was terminated in 2022. (Pl. Dep. at 182:16-19.)

10 At all relevant times, Ms. Trueblood reported directly to WISE Program Manager
11 Anna Williams. (*Id.* at 27:3; [REDACTED] Dep. at 9:24-10:2.) Ms. Trueblood sometimes
12 interacted with [REDACTED], another WISE Program Manager who led a different team of
13 peer counselors and parent partners that did not include Ms. Trueblood. ([REDACTED] Dep. at
14 6:24-7:5, 9:10-23; *see also id.* at 11:13-23.) Mr. [REDACTED] and Ms. Williams both reported to
15 Sarah Boye, Director of Specialty Services. (*Id.* at 11:2-12; *see* 1st Morse Decl. ¶ 11, Ex.
16 10 ("Henson Email") at 1.) Mr. [REDACTED] is transgender, as is one other WISE team member.
17 ([REDACTED] Dep. at 28:15-21, 59:19-20; Henson Decl. ¶ 13.)

18 **B. VCCC Begins Training on Pronoun Usage**

19 In or around 2020, VCCC began training its staff on the use of clients' preferred
20 names and pronouns. (*See* 1st Morse Decl. ¶ 5, Ex. 4 ("Pl. Notes") at 2.) VCCC
21 conducted one such training in August 2021, at which time the WISE Program
22 implemented and disseminated to all staff a Pronoun and Preferred Name Protocol (the

1 “Pronoun Protocol”). (██████ Dep. at 33:16-24; Pl. Dep. at 31:2-6; *see also* Tribbett Decl.
 2 ¶ 4, Ex. 7 (“Pronoun Protocol”) at 389.) The Pronoun Protocol applied to all WISE team
 3 members (Pl. Dep. at 33:16-18), and provides as follows:

4 Creating an inclusive & welcoming environment:

- 5 • Include your pronouns in your introductions and email signatures.
- 6 • When meeting a youth for the first time verify “it looks like Peter is
 7 the name we have in our system for you. Is that the name you’d like
 8 us to use on our documentation and in meetings?”
- If a youth shares in a 1:1 setting that they have a different name or
 pronouns they would like you to begin using, ask “Is it safe for me to
 use that name/pronoun in team and family settings as well?”

9 When a youth identifies that they have pronouns and/or preferred name they
 would like used throughout WISE by all team members:

- 10 • Update the pronoun and/or preferred name field in Credible⁶
- 11 • Ensure all WISE team members are aware of the correct identifier
- 12 • Begin using correct identifier on all documentation including:
 - 13 ○ Care Plan
 - 14 ○ Crisis Plan
 - 15 ○ Progress Notes
- 16 • Caseload Report will need to have legal/billing name included for
 reporting purposes
- 17 • Utilize preferred identifier in all case consultations, supervision &
 discussion about client with team members
- 18 • If it is necessary to use the youth’s legal name for billing, legal or
 other reasons, please use the following format:
 - 19 ○ “I have an update about Eric, whose legal name is James.”

17 (Pronoun Protocol at 389.) The Pronoun Protocol aligns with research and evidence
 18 showing that “[i]t is extremely detrimental to mental and behavioral health” to “deny[]
 19 trans[gender] people their authentic experience of who they are” by “misgendering them”
 20 and “not validating them,” which “significantly increases rates of suicide.” (██████ Dep.

21 _____
 22 ⁶ Credible is the electronic operating platform that VCCC uses to document client health
 records and staff records. (See Pl. Dep. 48:20-49:4.)

1 at 61:8-12.) For these reasons, if VCCC does not “honor the client’s wishes about
2 preferred name and pronoun, [it] caus[es] them harm.” (Henson Decl. ¶ 13; *see also* Pl.
3 Dep. at 51:15-18, 68:16-22 (Ms. Trueblood testifying that failure to use preferred names
4 and pronouns can cause transgender youth to “feel ostracized or rejected” and
5 “disrespected”).)

6 On February 28, 2022, the WISE Program hired a third-party vendor to conduct a
7 training exercise focused on proactive crisis and safety planning. (██████ Dep. at
8 14:23-15:2; Pl. Notes at 2.) The training involved “role plays and vignettes” in which
9 imaginary clients “with varying identities and experiences” presented at VCCC in crisis,
10 and WISE team members collaborated to respond. (██████ Dep. at 15:2-18.) During one
11 vignette exercise that involved a nonbinary youth client, Mr. ██████ observed Ms.
12 Trueblood and one other staff member repeatedly failing to use the imaginary client’s
13 preferred pronouns. (1st Morse Decl. ¶ 7, Ex. 6 (“██████ Email”) at 2.) In response, Mr.
14 ██████ gave about five “quick reminders” to use correct pronouns before stopping the
15 group “with a more firm reminder” that the vignette was specifically focused on the
16 youth client’s nonbinary identity “and not being accepted by their family.” (██████ Email
17 at 2.) Mr. ██████ instructed that WISE team members “need to be the ones to affirm [the
18 client’s] gender and pronouns,” and “they/them pronouns” were the only accurate and
19 acceptable pronouns for this client. (*Id.*) Thereafter, Ms. Trueblood “continued to use
20 incorrect pronouns consistently throughout the training.” (*Id.*) Mr. ██████ reported the
21 incident to Ms. Williams, Ms. Trueblood’s supervisor. (*See generally id.*)

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1 On March 4, 2022, Ms. Trueblood met with Ms. Williams for a regular
2 one-on-one check-in meeting called a “supervision.” (Pl. Dep. at 48:8-19; 1st Morse
3 Decl. ¶ 8, Ex. 7 (“3/4/22 Supervision”).) Among other discussion points, Ms. Williams
4 raised the topic of pronoun use. (3/4/22 Supervision.) Ms. Trueblood “shared that her
5 intent was not to disrespect anyone,” and the two discussed “impact versus intent.” (*Id.*)
6 Ms. Williams identified correct pronoun use as “an area of growth,” asked Ms. Trueblood
7 “to come up with a plan to increase awareness around the use of correct pronouns moving
8 forward,” and stated the conversation would continue at Ms. Trueblood’s next
9 supervision. (*Id.*; *see also* Pl. Dep. at 50:17-52:7.) At this point, Ms. Trueblood had
10 already decided that she would never use preferred pronouns, but she did not inform Ms.
11 Williams of this decision. (Pl. Dep. at 52:8-11, 53:14-22.)

12 **C. VCCC Assigns Ms. Trueblood Clients Who Use Preferred Pronouns**

13 In or around April 2022, Ms. Trueblood was assigned a gender nonconforming
14 youth client whose legal name was “A,” but who preferred the name “M” and used
15 they/them pronouns.⁷ (Pl. Notes at 2, 4; Pl. Dep. at 54:3-18, 64:3-12.) Although Ms.
16 Trueblood knew that M preferred they/them pronouns, she shared with M’s mother her
17 “intention” to use the pronouns that M “was assigned at birth.” (Pl. Notes at 4; *see* Pl.
18 Dep. at 59:18-61:8 (Ms. Trueblood stating it was her idea “to call M by the assigned or
19 biological pronouns” and she made the “conscious choice” to do so), 64:13-17.) M’s
20 mother—who was not accepting of M’s preferred name and pronouns—expressed

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⁷ The court refers to youth clients using their first initials for confidentiality purposes.

1 appreciation. (Pl. Notes at 4.) In early June, Ms. Trueblood consulted with a WISe team
2 facilitator and M's mother, and all agreed that Ms. Trueblood should call the "youth by
3 the name mom uses" because Ms. Trueblood was a parent partner, not a peer counselor.
4 (*Id.* at 2.)

5 Around the same time, Ms. Trueblood was assigned another gender
6 nonconforming youth client C, who preferred they/them pronouns. (*Id.* at 4; Pl. Dep. at
7 61:20-25.) On June 2, 2022, Ms. Trueblood called C's mother, who was in distress
8 because C had been physically assaulted at school due to their gender identity. (Pl. Notes
9 at 4; Pl. Dep. at 58:11-23.) The mother informed Ms. Trueblood of C's pronoun
10 preference and "kept on mistakenly using non-preferred pronouns," but nevertheless
11 indicated she "was trying to use the pronouns that C wanted used" and intended to honor
12 C's preference. (Pl. Dep. at 59:2-5.) At this point, Ms. Trueblood felt she "may not be
13 the best fit for the team," and raised her religious beliefs in her next supervision with Ms.
14 Williams on June 9, 2022. (Pl. Notes at 2, 4.) Ms. Williams indicated she was surprised
15 but respected Ms. Trueblood's religious beliefs. (*Id.* at 2.) The two discussed
16 expectations around preferred name and pronoun usage, and Ms. Williams advised she
17 would connect with Ms. Boye regarding Ms. Trueblood's concerns. (*Id.*; 1st Morse Decl.
18 ¶ 9, Ex. 8 ("Corrective Action") at 1.)

19 On June 23, 2022, Ms. Trueblood attended another regular supervision with Ms.
20 Williams. (Pl. Notes at 3; 1st Morse Decl. ¶ 14, Ex. 13 ("6/23/22 Supervision").)
21 Among other topics, the two again discussed pronoun usage including the "damage that
22 can be caused by not referring to [the] client appropriately." (6/23/22 Supervision.) Ms.

Williams also informed Ms. Trueblood of WAC 162-32-040, a Washington regulation that prohibits the deliberate misuse of an individual's preferred name, form of address, or gender-related pronoun in places of employment and public accommodation. (*Id.*) See generally WAC 162-32-040. The two discussed potential next steps, and Ms. Trueblood offered to be removed from C's care team and asked to review the cited regulation. (6/23/22 Supervision.)

D. Ms. Trueblood Faces Discipline and Requests Religious Accommodations

By June 29, 2022, Ms. Trueblood knew a corrective action meeting was scheduled to take place the following day, "so [she] sent a request for religious accommodations to [Human Resources ('HR')]." (Pl. Notes at 3; see Pl. Dep. at 71:6-16.) Specifically, Ms. Trueblood emailed Ms. Williams, Ms. Boye, and HR after hours requesting the following five workplace accommodations "based on religious beliefs and freedom of speech":

1. To offer to not work with clients who use preferred pronouns ["Accommodation One"]
2. To use a person's name (co-workers and clients) rather than preferred pronouns ["Accommodation Two"]
3. To pass on my pronoun when giving introductions ["Accommodation Three"]
4. To not state my pronoun on email signature ["Accommodation Four"]
5. To not use preferred pronouns but rather the person's name in case consultation, supervision and discussion with team members. ["Accommodation Five"]

(Tribbett Decl. ¶ 7, Ex. 12 ("Request") at 471.) The following morning, HR created a new "ticket" and responded to Ms. Trueblood by email, stating it would review and respond to her request for accommodations "as soon as possible." (Request at 471.)

Later, pursuant to VCCC's standard protocol, HR provided Ms. Trueblood an

1 accommodation request form to return and complete, which she did. (2d Morse Decl.
2 (Dkt. # 23) ¶ 3, Ex. A (“Doc. Prod.”) at 21; Henson Decl. at 10.)

3 The corrective action meeting proceeded as planned on June 30, 2022. (Corrective
4 Action at 1; Pl. Notes at 3.) Ms. Williams and Ms. Boye conducted the meeting and
5 thereafter issued a “Corrective Action Disciplinary Notice.” (Corrective Action at 1.)
6 That notice described the nature of the problem as follows:

7 [Ms. Trueblood] has been observed using incorrect pronouns when referring
8 to clients, after being informed of their chosen pronouns and preferred name.
9 This has occurred in staff trainings, supervision, collaboration with
10 colleagues, and in client meetings. [Ms. Trueblood] has stated to her
11 colleagues and supervisor that she will not use [the] client’s chosen
12 pronouns.

13 (*Id.*) The notice also listed several prior discussions and warnings as well as relevant
14 organizational policies on the subject. (*Id.*) In particular, the notice identified WAC
15 162-32-040 (which prohibits the deliberate misuse of one’s preferred pronouns, name,
16 and form of address), the Pronoun Protocol (which directs staff to use clients’ preferred
17 identifiers), and VCCC’s Staff Principles (which require staff to treat everyone with
18 dignity and respect). (*Id.*; see Pronoun Protocol at 389; Staff Principles); WAC
19 162-32-040. Following this meeting, Ms. Trueblood was to take “corrective action” by
20 beginning to use clients’ preferred names and pronouns, practicing using correct names
21 and pronouns, and attending training on gender-affirming care. (Corrective Action at 2.)
22 Ms. Trueblood agreed to participate in the training, but not to use or practice using
correct names and pronouns. (*Id.*) VCCC also warned that “[a]djustments may be made”
to Ms. Trueblood’s caseload as necessary (*id.*), and at some point, VCCC removed Ms.

1 Trueblood from M and C's care teams (Pl. Notes at 3; Pl. Dep. at 70:7-9; Tribbett Decl.
2 ¶ 17, Ex. 22 at 510-11).

3 Meanwhile, VCCC's Chief Administrative Officer, Jamie Noritake Henson, began
4 reviewing Ms. Trueblood's accommodation requests. (Henson Decl. ¶¶ 10-11.) Ms.
5 Henson consulted a number of employees and stakeholders, including Ms. Williams, Ms.
6 Boye, Angie Guerrero of HR, Director of Outpatient Services Megan Kelly, and CEO
7 Shekh Ali. (*Id.* ¶ 10.) Ms. Boye immediately raised concerns about Ms. Trueblood's
8 proposal to address transgender clients and staff by name rather than preferred pronouns.
9 (*Id.* ¶ 10, Ex. D ("Boye Email") at 2.) To illustrate how it would sound to omit pronouns,
10 Ms. Boye provided the following example, using Mr. Ali's name: "Shekh drank Shekh's
11 coffee while Shekh was in Shekh's office." (Boye Email at 2.) In Ms. Boye's view, this
12 was not sustainable because Ms. Trueblood had "already been trying to do this and ke[pt]
13 'accidentally' using the wrong pronoun instead of the name." (*Id.*) Ms. Boye added that
14 "[b]ecause [Ms. Trueblood] doesn't speak about everyone in this odd way, it just creates
15 confusion and 'others' the person who she is speaking about." (*Id.*)

16 Over the span of approximately two weeks, Ms. Henson continued to review
17 recommendations from leadership and gather information. (*See* Henson Decl. ¶¶ 10-14.)
18 She also consulted outside legal counsel and reviewed guidance from the Equal
19 Employment Opportunity Commission. (*Id.* ¶ 11.) By July 11, 2022, Ms. Kelly emailed
20 Ms. Guerrero of HR to inquire about a timeline for the review process, noting her
21 concern that Ms. Trueblood was "continuing to engage with clients and her colleagues in
22 a way that violates our internal policies and [WAC 162-32-040]." (Tribbett Decl. ¶ 10,

Ex. 15 (“Kelly Emails”) at 485.) Ms. Kelly expressed a need for urgent action, noting that “today,” Ms. Trueblood “misgendered frequently” and VCCC has “numerous youth struggling with gender issues” and “transgender[] staff who are continuously offended but do not want to formally complain.” (Kelly Emails at 483 (stating Ms. Trueblood “is violating state and federal laws” and “I personally am saddened by her stance”), 485 (“We are going to get into trouble if we do not act.”).)

E. VCCC Denies Three Accommodations and Ms. Trueblood’s Employment Ends

On July 15, 2022, Ms. Trueblood met with Ms. Henson and Ms. Guerrero. (Henson Decl. ¶ 14.) Ms. Henson explained that VCCC decided to approve Accommodations Three and Four, granting Ms. Trueblood permission to pass on her pronouns when giving introductions and to omit pronouns from her email signature because these were “optional” activities. (*Id.* ¶¶ 14-15.) Ms. Henson also shared that VCCC decided to deny Accommodations One, Two, and Five (the “Disputed Accommodations”). (*Id.*) Regarding Accommodation One, Ms. Henson explained that “[g]ender identity is a protected classification and working with clients on the basis of their pronouns would be discriminating on the basis of this protected classification.” (Henson Email at 3 (recapping the July 15 meeting).) Regarding Accommodations Two and Five, Ms. Henson explained that

[u]sing names rather than pronouns when communicating with individuals would need to be done on a non-discriminatory basis. To clarify, employees cannot use pronouns for people whose biology matches their identity but refuse to use pronouns when the identity doesn’t match the biology. It would need to be consistent in every interaction, otherwise again it is discrimination on the basis of gender identity.

1 (*Id.* at 3-4 (recapping meeting).) Ms. Henson asked “if there were any other options to
2 address the situation.” (Henson Decl. ¶ 14.) Ms. Trueblood “maintained that she would
3 not agree to any scenario where she used preferred pronouns,” and that she “would not
4 use any pronouns with staff and clients that used preferred pronouns.” (*Id.*)

5 Ms. Henson followed up by email on July 18, 2022, memorializing her
6 conversation with Ms. Trueblood and the basis for VCCC’s decision: “In summary, we
7 are unable to accommodate your request[s] that infringe[] on others’ rights to be free
8 from discrimination on the basis of their protected classification,” specifically “gender
9 and/or gender identity.” (Henson Email at 3-4 (citing WAC 162-32-040 and other
10 relevant anti-discrimination resources and legal provisions, including Title VII of the
11 Civil Rights Act of 1964 (“Title VII”)).) Ms. Henson further advised that “[t]o continue
12 employment with [VCCC], we will require your commitment that your beliefs do not
13 interfere with your ability to serve all clients equally.” (*Id.* at 4.) Because Ms. Trueblood
14 had “opted not to resign,” VCCC would “need to make the difficult decision to separate
15 employment” if Ms. Trueblood could not commit “to work with all clients and employees
16 regardless of gender identity.” (*Id.*)

17 Ms. Trueblood responded by email the following day to clarify her requests and
18 “ensure” that no accommodation was possible. (1st Morse Decl. ¶ 13, Ex. 12
19 (“Trueblood Email”).) She explained,

20 [m]y religious convictions require me to be honest and to avoid bearing false
21 witness. I believe that God lovingly created all human beings in His image,
22 and every person deserves the utmost respect and freedom of conscience. I
believe that He created male and female, and that even if a person appears
male or female, their chromosomes cannot be changed. As a result, were I

1 to use pronouns that I know are not correct, biologically and/or
2 chromosomally, I believe that I would be speaking falsely, which would
3 violate my religious beliefs. At the same time, since names are not inherently
4 gendered, I am happy to use whatever name a person prefers.

5 (Trueblood Email at 1.) Ms. Trueblood clarified that she had “never refused to work with
6 any client or co-worker” based on gender identity. (*Id.*) Accommodation One would
7 have simply allowed her to “offer” not to work with clients who use preferred pronouns,
8 which “seemed to be an easy accommodation” that would “avoid the pronoun issue
9 altogether.” (*Id.*) Alternatively, Accommodations Two and Five (*i.e.*, omitting pronouns
10 and using names only) would allow her “to comply with [her] religious beliefs while
11 continuing to refer to the client in a respectful and dignified manner, using the name the
12 client prefers.” (*Id.* at 2.)

13 In response, Ms. Henson reiterated that VCCC was “required to provide
14 non-discriminatory services to all clients and ensure our employees are abiding by federal
15 and state laws regarding gender identi[t]y and gender affirming care.” (*Id.* at 1.)
16 “[R]efusal to acknowledge/use an individual’s pronouns is discrimination.” (*Id.*) Ms.
17 Henson attached to her message a termination letter, which ended Ms. Trueblood’s
18 employment at VCCC as of July 19, 2022. (Termination Letter at 500.) The letter stated
19 that Ms. Trueblood was terminated by “mutual agreement, as [VCCC] could not
20 accommodate [Ms. Trueblood’s] request[s] for religious accommodation.” (*Id.*) Other
21 stated reasons for termination included the violation of VCCC’s Compliance and Ethics
22 Policy, federal guidance on gender-affirming care, and Title VII guidelines. (*Id.*) Ms.

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Trueblood responded by email, expressing disagreement that her termination was a mutual decision. (Tribbett Decl. ¶ 14, Ex. 19 at 502.)

F. Procedural History

On February 23, 2023, Ms. Trueblood filed this lawsuit, claiming VCCC and five Doe defendants (the “Doe Defendants”): (1) failed to accommodate her religious practices in violation of Title VII, 42 U.S.C. § 2000e, *et seq.*, and the Washington Law Against Discrimination (“WLAD”), ch. 49.60 RCW; and (2) retaliated against her in violation of Title VII. (Compl. (Dkt. # 1) ¶¶ 6-7, 32-53.) In her complaint, Ms. Trueblood stated she would seek leave to amend “to assert the true names and capacities of [the Doe Defendants] when the same have been ascertained” (*id.* ¶ 7), though she never did so (*see generally* Dkt.).

VCCC waived service of the complaint and agreed to answer by no later than May 5, 2023. (*See* Waiver (Dkt. # 3) (requiring an answer or motion under Federal Rule of Civil Procedure 12 “within 60 days from” March 6, 2023).) Although the case progressed through discovery, VCCC inadvertently failed to file its answer to the complaint until June 24, 2024—four days before the dispositive motions deadline. (Answer (Dkt. # 15); 2d Morse Decl. ¶ 4; *see* 4/2/24 Order (Dkt. # 14) (setting deadline of June 28, 2024).) Now before the court are Ms. Trueblood’s and VCCC’s cross-motions for summary judgment. (*See generally* Pl. MSJ; Def. MSJ.)

III. ANALYSIS

VCCC moves for summary judgment in its favor on each of Ms. Trueblood’s claims. (*See generally* Def. MSJ.) Ms. Trueblood opposes VCCC’s motion (*see*

generally Pl. Resp.) and cross-moves for partial summary judgment in her own favor on each of her claims against VCCC with respect to the issue of liability. (*See generally* Pl. MSJ (no request for summary judgment on the issue of damages, nor against the Doe Defendants⁸)). As the parties agree, the facts are largely undisputed and the issues are ripe for decision. (*See* Stip. Mot. (Dkt. ## 12-13) at 2 (“The parties desire to resolve this case by dispositive motion practice, and do not intend to move forward to trial.”)). The court begins its analysis by setting forth the relevant legal standard before turning to the parties’ arguments in favor of their respective motions.

A. Summary Judgment Legal Standard

Summary judgment is appropriate if the evidence viewed in the light most favorable to the non-moving party shows “that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A fact is “material” if it might affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute is “‘genuine’ only if there is sufficient evidence for a reasonable fact finder to find for the non-moving party.” *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 992 (9th Cir. 2001) (citing *Anderson*, 477 U.S. at 248-49).

⁸ Ms. Trueblood has abandoned her claims against the Doe Defendants because she failed to address any such claims in her briefing. (*See generally* Pl. MSJ; Pl. Resp.; *see also* Compl. ¶ 7.) “A party abandons an issue when it has a full and fair opportunity to ventilate its views with respect to an issue and instead chooses a position that removes the issue from the case.” *Ramirez v. City of Buena Park*, 560 F.3d 1012, 1026 (9th Cir. 2009) (quoting *Davis v. City of Las Vegas*, 478 F.3d 1048, 1058 (9th Cir. 2007)) (affirming summary judgment on state law claims where the plaintiff “abandoned his state law claims by not addressing them in either his Motion for Partial Summary Judgment or his Opposition to Defendants’ Motion or Summary Judgment”). The court therefore dismisses the Doe Defendants from this action.

1 The moving party bears the initial burden of showing there is no genuine dispute
2 of material fact and that it is entitled to prevail as a matter of law. *Celotex*, 477 U.S. at
3 323. If the moving party does not bear the ultimate burden of persuasion at trial, it can
4 show the absence of such a dispute in two ways: (1) by producing evidence negating an
5 essential element of the nonmoving party’s case, or (2) by showing that the nonmoving
6 party lacks evidence of an essential element of its claim or defense. *Nissan Fire &*
7 *Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1106 (9th Cir. 2000). If the moving party
8 meets its burden of production, the burden then shifts to the nonmoving party to identify
9 specific facts from which a factfinder could reasonably find in the nonmoving party’s
10 favor. *Celotex*, 477 U.S. at 324; *Anderson*, 477 U.S. at 250. Where cross-motions are at
11 issue, the court must “evaluate each motion separately, giving the nonmoving party in
12 each instance the benefit of all reasonable inferences.” *ACLU of Nev. v. City of Las*
13 *Vegas*, 466 F.3d 784, 790-91 (9th Cir. 2006); *Tulalip Tribes of Wash. v. Washington*, 783
14 F.3d 1151, 1156 (9th Cir. 2015) (“[W]hen simultaneous cross-motions for summary
15 judgment on the same claim are before the court, the court must consider the appropriate
16 evidentiary material identified and submitted in support of both motions, and in
17 opposition to both motions, before ruling on each of them.” (quoting *Fair Hous. Council*
18 *of Riverside Cnty., Inc. v. Riverside Two*, 249 F.3d 1132, 1134 (9th Cir. 2001))).

19 **B. Failure to Accommodate**

20 Title VII proscribes the discharge of any individual “because of” that individual’s
21 religion. 42 U.S.C. § 2000e-2(a)(1). To that end, an employer must “reasonably
22 accommodate” an employee’s religious practices unless doing so would pose an “undue

1 hardship on the conduct of the employer’s business.” 42 U.S.C. § 2000e(j); *see EEOC v.*
 2 *Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 771-72 (2015) (discussing failure to
 3 accommodate as a theory of disparate treatment, rather than a standalone Title VII claim).
 4 Similarly, WLAD proscribes the discharge of any employee “because of . . . creed,”
 5 RCW 49.60.180(3), and requires employers to “reasonably accommodate an employee’s
 6 religious practices” unless such an accommodation would pose an undue hardship on the
 7 employer, *Kumar v. Gate Gourmet Inc.*, 325 P.3d 193, 197, 203 (Wash. 2014) (“[T]he
 8 term ‘creed’ in the WLAD refers to religious belief.”).

9 Under both Title VII and WLAD, courts employ a burden-shifting framework to
 10 analyze failure-to-accommodate claims. *Bolden-Hardge v. Off. of Cal. State Controller*,
 11 63 F.4th 1215, 1222 (9th Cir. 2023) (Title VII); *see Kumar*, 325 P.3d at 203 (WLAD).
 12 The employee must first establish a *prima facie* case of failure to accommodate her
 13 religion. *Bolden-Hardge*, 63 F.4th at 1222; *see Kumar*, 325 P.3d at 203. To do so, the
 14 employee must show: (1) she had a bona fide religious belief, the practice of which
 15 conflicted with an employment duty; (2) she informed her employer of the belief and the
 16 conflict; and (3) the employer discharged, threatened, or otherwise subjected her to an
 17 adverse employment action because of her inability to fulfill the job requirement.
 18 *Peterson v. Hewlett-Packard Co.*, 358 F.3d 599, 606 (9th Cir. 2004); *Kumar*, 325 P.3d at
 19 501. If the employee establishes a *prima facie* case, the burden shifts to the employer to
 20 “show that it was nonetheless justified in not accommodating the employee’s religious
 21 beliefs or practices.” *Bolden-Hardge*, 63 F.4th at 1222; *accord Kumar*, 325 P.3d at 203.
 22 Under Title VII, an employer can meet this burden by showing “that it ‘initiated good

1 faith efforts to accommodate reasonably the employee's religious practices or that it
2 could not reasonably accommodate the employee without undue hardship.'" *Peterson*,
3 358 F.3d at 606 (quoting *Tiano v. Dillard Dep't Stores, Inc.*, 139 F.3d 679, 681 (9th Cir.
4 1998)). Similarly, an employer can meet its burden under WLAD by showing the
5 "accommodation would be an undue hardship." *Kumar*, 325 P.3d at 203 (internal
6 quotation marks omitted).

7 Here, VCCC concedes the second and third elements of Ms. Trueblood's *prima*
8 *facie* case, acknowledging she "requested accommodations to conform to her beliefs" and
9 "VCCC ultimately made the very difficult decision to separate [Ms. Trueblood]'s
10 employment when she refused to treat all clients and staff equally, which was a
11 requirement of her job." (Def. Resp. at 5.) VCCC "does not concede," however, that
12 Ms. Trueblood "had a bona fide religious belief that conflicted [with] her duties as an
13 employee." (Def. MSJ at 14 n.1 (arguing in a footnote why this first element is not met).)
14 For purposes of the instant motions, the court will assume without deciding that Ms.
15 Trueblood has established a *prima facie* case of failure to accommodate religion.

16 Accordingly, the court's central inquiry is whether VCCC has met its burden to
17 show it was "justified in not accommodating [Ms. Trueblood]'s religious beliefs or
18 practices." *Bolden-Hardge*, 63 F.4th at 1222. The court concludes VCCC is not entitled
19 to summary judgment based solely on good faith efforts to accommodate Ms.
20 Trueblood's religious practices, but VCCC nevertheless prevails on Ms. Trueblood's
21 failure-to-accommodate claims because it establishes undue hardship as a matter of law.

22 //

1 1. Good Faith Efforts

2 As noted, once an employee establishes a *prima facie* case of failure to
 3 accommodate religion under Title VII, “the burden shifts to the employer to prove that it
 4 made good faith efforts to accommodate that employee’s religious belief.” *Am. Postal*
 5 *Workers Union, S.F. Loc. v. Postmaster Gen.*, 781 F.2d 772, 776 (9th Cir. 1986). An
 6 employer meets this burden “when it demonstrates that it has offered a reasonable
 7 accommodation to the employee.” *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 69
 8 (1986). If an employer suggests a possible accommodation, this triggers “[a]n
 9 employee’s ‘concomitant duty’ to cooperate” “in the search for an acceptable
 10 reconciliation of the needs of the employee’s religion and the exigencies of the
 11 employer’s business.” *Heller v. EBB Auto Co.*, 8 F.3d 1433, 1440 (9th Cir. 1993) (first
 12 quoting *Am. Postal Workers*, 781 F.2d at 777; then quoting *Ansonia*, 479 U.S. at 69). But
 13 “[w]hen an employer does not propose an accommodation, or when its proposed
 14 accommodation does not eliminate the employee’s religious conflict, the employer must
 15 accept the employee’s proposal or demonstrate that the proposal would cause the
 16 employer undue hardship.” *EEOC v. Townley Eng’g & Mfg. Co.*, 859 F.2d 610, 615 (9th
 17 Cir. 1988); accord *Opuku-Boateng v. California*, 95 F.3d 1461, 1467 (9th Cir. 1996).

18 In this case, VCCC presents no evidence that it proposed to Ms. Trueblood a
 19 reasonable alternative accommodation that would have eliminated the religious conflict.
 20 Accordingly, and because VCCC ultimately declined three of Ms. Trueblood’s five
 21 proposed accommodations, VCCC fails to establish it made good faith efforts to
 22 reasonably accommodate Ms. Trueblood’s religious beliefs. *See Townley*, 859 F.2d at

1 615. VCCC can escape liability only if it establishes that the Disputed Accommodations
2 would have posed an undue hardship. *See id.*

3 Analogizing to *Peterson v. Hewlett-Packard Co.*, VCCC argues it made good faith
4 efforts to reasonably accommodate Ms. Trueblood's religious beliefs because VCCC
5 took some "initial step[s]" to that end. (Def. Resp. at 5-7 (quoting *Peterson*, 358 F.3d at
6 606).) Specifically, VCCC asserts it "went far beyond the good faith steps taken in
7 *Peterson*" by "carefully reviewing" Ms. Trueblood's requests, "consult[ing] numerous
8 stakeholders and legal counsel," meeting with Ms. Trueblood herself, and granting two of
9 the five requested accommodations. (*Id.*) VCCC appears to read *Peterson* as holding
10 that an employer can satisfy its duty to make good faith efforts by taking *any* initial steps
11 to consider the employee's requested accommodations, regardless of whether the
12 employer proposed a reasonable alternative accommodation. VCCC misreads *Peterson*
13 and misapprehends its burden.

14 In *Peterson*, the Ninth Circuit stated that "[a]n employer's duty to negotiate
15 possible accommodations ordinarily requires it to take 'some initial step to reasonably
16 accommodate the religious belief of that employee.'" 358 F.3d at 606. The court then
17 observed the employer had "convened at least four meetings with" the employee,
18 "attempt[ing] to determine whether it would be possible to resolve the conflict in a
19 manner that would respect the dignity of" other staff. *Id.* But, the court did not stop
20 there: "Given [the employee]'s refusal to consider other accommodations," the court
21 "proceed[ed] to evaluate whether one or both of the 'acceptable' accommodations would
22 have imposed undue hardship upon" the employer. *Id.* at 607; *see id.* at 608 (affirming

summary judgment in employer's favor on the basis of undue hardship). At no point did the *Peterson* court hold as a matter of law that the employer met its burden to show it undertook good faith accommodation efforts. It would have been unnecessary to reach the undue hardship defense if the *Peterson* court had so held. *See id.* at 606 (stating the employer must show good faith efforts *or* undue hardship); (*see also* Def. Resp. at 4 (acknowledging this requirement "is set forth in the disjunctive," and an employer "need only show" one of the two))). Because *Peterson* was decided solely on undue hardship grounds, this court rejects VCCC's analogy to *Peterson* regarding VCCC's good faith efforts. *Peterson* does not support resolving this case on the basis of good faith efforts alone where VCCC declined to propose any alternative accommodations.

In sum, VCCC fails to show it "offered a reasonable accommodation to" Ms. Trueblood that would have eliminated the religious conflict. *Ansonia*, 479 U.S. at 69. Thus, VCCC was required to "accept [Ms. Trueblood]'s proposal or demonstrate that the proposal would cause the employer undue hardship." *Townley*, 859 F.2d at 615. Because VCCC ultimately denied three of five requested accommodations, the court proceeds to consider whether implementing the Disputed Accommodations would have imposed undue hardship upon VCCC.

2. Undue Hardship

"Undue hardship is an affirmative defense" that VCCC must plead and prove. *Bolden-Hardge*, 63 F.4th at 1224; *see also Green v. James*, 473 F.2d 660, 661 (9th Cir. 1973). The court begins its analysis of undue hardship by addressing Ms. Trueblood's procedural challenge to VCCC's untimely answer to the complaint.

1 *a. VCCC's Untimely Answer*

2 Ms. Trueblood argues VCCC cannot escape liability on her
3 failure-to-accommodate claims based on an affirmative defense—undue hardship—that
4 VCCC failed to timely plead. (*See* Pl. MSJ at 12-16.) Although VCCC filed its answer
5 over 13 months beyond the deadline, Ms. Trueblood did not move to strike the pleading.
6 (*See generally* Dkt.) VCCC argues that “[e]ven if there were a motion to strike pending,”
7 Ms. Trueblood cannot demonstrate prejudice from the delay because her litigation
8 conduct shows she has long understood VCCC’s intent to assert an undue hardship
9 affirmative defense. (Def. Resp. at 7-10.)

10 Federal Rule of Civil Procedure 12 governs defense pleading but “does not
11 provide a specific sanction for late filing of an answer.” *McCabe v. Arave*, 827 F.2d 634,
12 639 n.5 (9th Cir. 1987). The Ninth Circuit has directed that a district court may exercise
13 its inherent power to strike an untimely answer as a sanction for bad faith conduct. *Id.* at
14 639-40. Thus, “the mere fact that an answer was untimely filed does not necessarily
15 result in an automatic exclusion of a defendant’s affirmative defenses.” *Est. of Hirata v.*
16 *Ida*, No. 10-00084 LEK-RLP, 2011 WL 3290409, at *3 (D. Haw. June 14, 2011) (citing
17 *McCabe*, 827 F.2d at 639-40). Rather, the district court has discretion to strike a
18 late-filed answer, and it may issue such a sanction only upon a finding of bad faith.
19 *McCabe*, 827 F.2d at 640 (finding no abuse of discretion in declining to strike untimely
20 answer filed on the first day of trial where defense counsel’s delay was in “good faith, but
21 inadvertent”).

22 //

1 The court declines to strike or otherwise disregard VCCC's untimely answer
2 because the record does not support a finding of bad faith. The court accepts defense
3 counsel's representation that the late filing was an "inadvertent" oversight (2d Morse
4 Decl. ¶ 4), and admonishes defense counsel for such extreme and irresponsible delay.
5 Nevertheless, VCCC participated and cooperated in discovery, which evidences VCCC's
6 intent to defend the merits of Ms. Trueblood's claims, rather than bad faith. (*See* Stip.
7 Mot. at 2 ("The parties have worked together regarding discovery and all discovery has
8 been completed by the required date")) Moreover, the court can adduce no
9 prejudice to Ms. Trueblood. Although she suggests she lacked fair notice of VCCC's
10 undue hardship affirmative defense (*see* Pl. MSJ at 13), this assertion is belied by the
11 record, which shows that Ms. Trueblood sought and received discovery concerning undue
12 hardship. (*See, e.g.*, 2d Morse Decl. ¶ 7, Ex. B at 3-4 (Ms. Trueblood's notice of
13 deposition pursuant to Federal Rule of Civil Procedure 30(b)(6), identifying as "matters
14 of inquiry" "the standard of undue burden considered at the time of the accommodation
15 decision" and "[w]hether any and/or all possible accommodations would pose an undue
16 hardship on [VCCC]"); *id.* ¶ 8, Ex. C ("Henson Dep. Supp.") at 125:10-15 (Ms.
17 Trueblood's attorney asking Ms. Henson, VCCC's Rule 30(b)(6) deponent, "[h]ow is
18 there a risk, harm, or burden" in accommodating a request to use first names only and
19 Ms. Henson responding that "[i]t's discriminatory").) Ms. Trueblood "has not identified
20 what specific discovery" she would have otherwise sought had VCCC timely filed its
21 answer. *Hirata*, 2011 WL 3290409, at *3. This court is also mindful of the strong public
22 policy in favor of resolving cases on their merits. *See In re Amazon Serv. Fee Litig.*, ---F.

1 Supp. 3d ----, 2023 WL 8472724, at *3 (W.D. Wash. Dec. 7, 2023) (stating motions to
2 strike affirmative defenses “are generally disfavored” in part “because of the strong
3 policy favoring resolution on the merits”).

4 For all of these reasons, the court rejects Ms. Trueblood’s invitation to disregard
5 VCCC’s untimely answer. The court now proceeds to consider the merits of VCCC’s
6 undue hardship affirmative defense.

7 *b. Undue Hardship Legal Standard*

8 Last year, the United States Supreme Court unanimously clarified the meaning of
9 “undue hardship” under Title VII. *See generally Groff v. DeJoy*, 600 U.S. 447 (2023). In
10 decades past, an employer could demonstrate undue hardship by showing an
11 accommodation would have required the employer to bear “more than a *de minimis* cost.”
12 *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 84 (1977). Then came *Groff*. *Groff*
13 concerned an Evangelical Christian postal worker who requested not to work on Sundays
14 in observation of his Sunday Sabbath practices. *Id.* at 454-55. Mr. Groff repeatedly
15 faced discipline for failing to work on Sundays, until he ultimately resigned and sued his
16 employer under a failure-to-accommodate theory. *Id.* at 455. Applying the “*de minimis*
17 cost” test, the lower courts ruled in the employer’s favor on the basis of undue hardship.
18 *Id.* at 456. The U.S. Supreme Court, however, charted a different path.

19 Under *Groff*, an employer must demonstrate undue hardship by showing “that the
20 burden of granting an accommodation would result in substantial increased costs in
21 relation to the conduct of its particular business.” *Id.* at 470. This is a “fact-specific
22 inquiry” that “takes into account all relevant factors in the case at hand, including the

1 particular accommodations at issue and their practical impact in light of the nature, size
2 and operating cost of an employer.” *Id.* at 468, 470-71 (cleaned up). Impacts on
3 co-workers can be relevant, but only where they “go on to affect the conduct of the
4 business.” *Id.* at 472 (cleaned up). “[A] hardship that is attributable to employee
5 animosity to a particular religion, to religion in general, or to the very notion of
6 accommodating religious practice cannot be considered ‘undue.’” *Id.* Moreover, “Title
7 VII requires that an employer reasonably accommodate an employee’s practice of
8 religion, not merely that it assess the reasonableness of a particular possible
9 accommodation or accommodations.” *Id.* at 473. “Faced with an accommodation
10 request like Groff’s,” for example, “it would not be enough for [the] employer to
11 conclude that forcing other employees to work overtime would constitute an undue
12 hardship.” *Id.* “Consideration of other options, such as voluntary shift swapping, would
13 also be necessary.” *Id.*

14 In the end, *Groff* elucidated that the “undue hardship” standard is more rigorous
15 than previously understood. But the U.S. Supreme Court eschewed bright-line rules in
16 favor of a “context-specific” approach, leaving it to the lower courts to “resolve whether
17 a hardship would be substantial in the context of an employer’s business in the
18 common-sense manner that [they] would use in applying any such test.” *Id.* at 471, 473
19 (remanding for the lower courts to apply the newly clarified undue hardship standard to
20 Groff’s case “in the first instance”). The Washington Supreme Court recently endorsed
21 the *Groff* standard, holding “a court considering an ‘undue hardship’ defense in response
22 to a failure to reasonably accommodate an employee’s religious practices under the

1 WLAD must apply the substantial burdens test.” *Suarez v. Washington*, 552 P.3d 786,
 2 798-99 (Wash. 2024) (citing *Groff*, 600 U.S. at 469).

3 After *Groff*, courts have overwhelmingly agreed that both economic and
 4 non-economic costs remain relevant to the “undue hardship” analysis. *See, e.g.*,
 5 *Lavelle-Hayden v. Legacy Health*, --- F. Supp. 3d ----, 2024 WL 3822712, at *8-10 (D.
 6 Or. Aug. 14, 2024); *Kluge v. Brownsburg Com. Sch. Corp.*, --- F. Supp. 3d ----, 2024 WL
 7 1885848, at *15 (S.D. Ind. Apr. 30, 2024); *Bordeaux v. Lions Gate Ent., Inc.*, 703 F.
 8 Supp. 3d 1117, 1130 (C.D. Cal. 2023); *Smith v. City of Atlantic City*, 703 F. Supp. 3d
 9 511, 524 (D. N.J. 2023); *Suarez*, 552 P.3d at 799. The parties in this case do not dispute
 10 that *Groff* left intact a long line of Ninth Circuit precedent shielding employers from
 11 liability under Title VII where “accommodating an employee’s religious beliefs would
 12 require the employer to violate federal or state law because the existence of such a law
 13 establishes undue hardship.” *Bolden-Hardge*, 63 F.4th at 1225 (cleaned up); *accord*
 14 *Peterson*, 358 F.3d at 607 (“[A]n employer need not accommodate an employee’s
 15 religious beliefs if doing so would result in discrimination against his co-workers or
 16 deprive them of contractual or other statutory rights.”); *Suarez*, 552 P.3d at 800 (holding
 17 an accommodation that “violates state law,” such as WLAD, “is unsurprisingly an undue
 18 hardship” in the context of failure-to-accommodate claims under Washington law). (*See*
 19 Pl. MSJ at 19; Def. MSJ at 15-16.) Even a “danger” of violating the law suffices to show
 20 undue hardship. *Berry v. Dep’t of Soc. Servs.*, 447 F.3d 642, 655 (9th Cir. 2006) (finding
 21 undue hardship where proposed accommodations “create[d] a danger” that public
 22 employer would violate the Establishment Clause). Mere “potential” for liability

likewise suffices. *Bolden-Hardge*, 63 F.4th at 1225; *Bhatia v. Chevron U.S.A., Inc.*, 734 F.2d 1382, 1384 (9th Cir. 1984) (finding undue hardship where proposed accommodations required employer to “risk liability” under California health and safety regulations).

In this case, VCCC denied three accommodations on the basis of undue hardship: (1) Accommodation One, “[t]o offer to not work with clients who use preferred pronouns”; (2) Accommodation Two, “[t]o use a person’s name (co-workers and clients) rather than preferred pronouns”; and (3) Accommodation Five, “[t]o not use preferred pronouns but rather the person’s name in case consultation, supervision and discussion with team members.” (Henson Email at 3-4.) VCCC argues the Disputed Accommodations would impose undue hardship under *Bolden-Hardge* and its progeny by requiring VCCC to run afoul of federal and state anti-discrimination law. (Def. MSJ at 17-19.) VCCC further argues that “allowing [Ms. Trueblood] to discriminate against co-workers and clients based on their gender identity or expression is unquestionably an undue burden” when “looking at the context of VCCC’s mission and services.” (*Id.* at 19 (citing *Groff*, 600 U.S. at 471).) The court agrees with VCCC.

c. VCCC Establishes Undue Hardship

VCCC demonstrates undue hardship because the Disputed Accommodations would sanction discrimination against VCCC’s clients and staff and, at the very least, create a danger of violating federal and state law, exposing VCCC to potential liability as a result. Indeed, the Disputed Accommodations implicate a web of federal and state anti-discrimination law, as follows.

1 Title VII makes it unlawful for an employer “to discriminate against any
2 individual with respect to his compensation, terms, conditions, or privileges of
3 employment, because of such individual’s . . . sex.” 42 U.S.C. § 2000e-2(a)(1); *Bostock*
4 *v. Clayton Cnty.*, 590 U.S. 644, 683 (2020) (interpreting “sex” under Title VII to
5 encompass sexual orientation and gender identity). As the Ninth Circuit has explained:
6 “In the context of our civil rights laws, including Title VII, discrimination is the use of a
7 forbidden criterion”—such as sex—“as a basis for disadvantageous difference in
8 treatment.” *Rene v. MGM Grand Hotel, Inc.*, 305 F.3d 1061, 1067 (9th Cir. 2002) (en
9 banc) (plurality opinion) (emphasis omitted); *see also City of L.A., Dep’t of Water &*
10 *Power v. Manhart*, 435 U.S. 702, 708 (1978) (holding employer violated Title VII by
11 requiring women to make larger pension contributions than men because that policy
12 could not “pass the simple test” of showing that female employees were treated the same
13 regardless of sex). Title VII also “prohibits creation of a hostile work environment,”
14 defined as a workplace “so pervaded by discrimination that the terms and conditions of
15 employment were altered.” *Vance v. Ball*, 570 U.S. 421, 427 (2013); *see Harris v.*
16 *Forklift Sys.*, 510 U.S. 17, 20 (1993) (explaining that Title VII does not tolerate a
17 workplace “permeated with discriminatory intimidation, ridicule, and insult” that is
18 “objectively hostile or abusive” (internal quotation marks omitted)). An employer is
19 liable for a hostile work environment if it was negligent in failing to prevent the
20 offending conduct, regardless of whether or not the offender is a supervisor. *Vance*, 570
21 U.S. at 446-49.

22 //

1 Similarly, WLAD makes it unlawful for an employer to “discriminate against any
2 person in compensation or in other terms or conditions of employment because of”
3 gender expression or identity. RCW 49.60.180(3) (proscribing discrimination on the
4 basis of sexual orientation); RCW 49.60.040(29) (defining “sexual orientation” to include
5 “gender expression or identity”). An employer can be liable under WLAD for a hostile
6 work environment stemming from harassment on the basis of gender expression or
7 identity if supervisory personnel become aware of the harassment and fail to “take
8 remedial action that is reasonably calculated to end the harassment.” *See Perry v. Costco*
9 *Wholesale, Inc.*, 98 P.3d 1264, 1267-68 (Wash. Ct. App. 2004) (noting that harassment
10 must be sufficiently pervasive to affect the terms and conditions of employment for
11 liability to attach under the WLAD).

12 WLAD also proscribes discrimination on the basis of gender expression or identity
13 in places of public accommodation, such as VCCC.⁹ RCW 49.60.030(1)(b); RCW
14 49.60.040(29). In particular, it is unlawful “for any person or the person’s agent or
15 employee to” commit any “act which directly or indirectly results in any distinction,
16 restriction, or discrimination” in a place of public accommodation. RCW 49.60.215(1);
17 RCW 49.60.040 (broadly defining “person” to include any “owner, lessee, proprietor,
18 manager, agent, or employee,” among other individuals). “Employers are liable for their
19 employees’ discriminatory conduct toward a customer in a place of public
20

21 ⁹ VCCC is a place of public accommodation because it offers healthcare and medical
22 services to the public. RCW 49.60.040(2). *See, e.g., Floeting v. Grp. Health Coop.*, 434 P.3d
39, 40 (Wash. 2019) (“Group Health, a nonprofit health care system . . . is a place of public
accommodation.”).

1 accommodation.” *Floeting v. Grp. Health Coop.*, 434 P.3d 39, 45 (Wash. 2019). Unlike
2 the employment context, however, even “[a] single discriminatory act in a place of public
3 accommodation may violate WLAD.” *Id.* at 43 (rejecting the “pervasiveness” standard
4 applicable to employment cases in favor of a “strict liability” approach).

5 The Washington State Human Rights Commission has adopted regulations that
6 “interpret[] and implement[] the sexual orientation and gender expression and gender
7 identity discrimination protections of” WLAD. WAC 162-32-010. “Harassment based
8 on an individual’s sexual orientation or gender expression or gender identity is
9 prohibited.” WAC 162-32-040(1). In employment settings, “[s]exual orientation or
10 gender identity harassment” is “offensive and unwelcome behavior serious enough to
11 affect the terms and conditions of employment” that “occurred because of an individual’s
12 sexual orientation or gender expression or gender identity, and can be imputed to the
13 employer.” *Id.* In public accommodation settings, “[s]exual orientation harassment or
14 [gender identity] harassment . . . is offensive and unwelcome behavior” that is “serious
15 enough to alter the individual’s experience at the place of public accommodation,” that
16 occurred because of the individual’s identity, and that “can be imputed to the place of
17 public accommodation.” WAC 162-32-040(3). Prohibited conduct “may include, but is
18 not limited to . . . [a]sking unwelcome personal questions about an individual’s sexual
19 orientation, gender expression or gender identity, transgender status, or sex assigned at
20 birth,” and “[t]he deliberate misuse of an individual’s preferred name, *form of address*, or
21 gender-related pronoun.” WAC 162-32-040(2)(a), (d) (emphasis added).

22 //

1 Against this backdrop, the court has little trouble concluding that the Disputed
 2 Accommodations impose undue hardship upon VCCC by placing it in the untenable
 3 position of affronting both federal and state anti-discrimination law, and exposing it to
 4 potential liability. Beginning with Accommodations Two and Five, these requests would
 5 have permitted Ms. Trueblood to address her transgender colleagues and clients by name
 6 only, while addressing her cisgender colleagues and clients by both name *and* pronoun.
 7 (Pl. Dep. at 96:24-97:3, 97:15-23.) This practice would acknowledge and validate
 8 cisgender individuals' identities without affording transgender individuals the same
 9 courtesy, solely because they are transgender. As VCCC explains, the effect is to create
 10 "a second class of coworkers and clients not worthy of pronoun use." (Def. MSJ at 19;
 11 *see* Henson Dep. Supp. at 124:7-125:23 (explaining that using names only in lieu of
 12 pronouns is "discriminatory" and "othering"); Boye Email at 2 (Ms. Boye explaining that
 13 this strategy "is unsustainable" because Ms. Trueblood "doesn't speak about everyone in
 14 this odd way," which "creates confusion and 'others' the person who she is speaking
 15 about").) Such a practice would treat transgender individuals differently, and
 16 disadvantageously, on the basis of gender identity—that is discrimination, point blank.¹⁰
 17 *See Rene*, 305 F.3d at 1067. Neither Title VII nor WLAD requires an employer to

18
 19 ¹⁰ To be clear, treating an individual disadvantageously based on their use of preferred
 20 pronouns is no different than discriminating against an individual on the basis of gender
 21 identity—the practice is facially discriminatory. At a minimum, preferred pronoun usage is a
 22 proxy for transgender identity. *See Schmitt v. Kaiser Found. Health Plan of Wash.*, 965 F.3d
 945, 958 (9th Cir. 2020) (explaining that "proxy discrimination" "arises when the defendant
 enacts a law or policy that treats individuals differently on the basis of seemingly neutral criteria
 that are so closely associated with the disfavored group that discrimination on the basis of such
 criteria is, constructively, facial discrimination against the disfavored group").

1 accommodate a plainly discriminatory practice. *See Peterson*, 358 F.3d at 607 (holding
2 an employer need not accommodate discriminatory actions “that demean or
3 degrade . . . members of its workforce”); *Suarez*, 552 P.3d at 800 (holding “[a]n
4 accommodation requiring preferential treatment on the basis of religion to the detriment
5 of other protected classes” is an undue hardship).

6 Permitting Ms. Trueblood to proceed in this manner would also create at least
7 some potential for liability under a variety of federal and state discrimination theories.
8 *See Bolden-Hardge*, 63 F.4th at 1225; *Vance*, 570 U.S. at 446-49 (Title VII hostile work
9 environment); *Perry*, 98 P.3d at 1267-68 (WLAD hostile work environment); *Floeting*,
10 434 P.3d at 45 (WLAD public accommodations discrimination). Specifically under
11 WLAD, Accommodations Two and Five would effectively sanction harassment in both
12 the employment and public accommodations context where a transgender colleague or
13 client’s preferred “form of address” specifically includes *both* name and pronouns, rather
14 than name alone. WAC 162-32-040(2)(d). Although harassment must meet a high
15 threshold of pervasiveness to establish a hostile work environment claim, employers are
16 nonetheless obligated to take measures to curb harassing conduct that *could* incite a
17 hostile work environment—or else risk liability. *See Vance*, 570 U.S. at 446; *Perry*, 98
18 P.3d at 1267-68; *see also Brown v. Alaska Airlines, Inc.*, No. C22-0668BJR, 2024 WL
19 2325058, at *11 (W.D. Wash. May 22, 2024) (citing *Bolden-Hardge*, 63 F.4th at 1225)
20 (rejecting failure-to-accommodate claim because an employer “has no obligation to wait
21 until religiously motivated discriminatory [and harassing] behavior rises to an actionable
22 level to take action to curb that behavior”). And because Washington endorses a “strict

liability” approach with respect to places of public accommodation, even one instance of a staff member deliberately misusing a VCCC client’s preferred form of address under WAC 162-32-040 could render VCCC liable as a place of public accommodation. *Floeting*, 434 P.3d at 45. The record demonstrates that the potential for liability on this ground was not illusory, as clients and staff had raised concerns about Ms. Trueblood failing to use preferred pronouns. (See ████████ Dep. at 28:15-25 (stating a transgender colleague reported an instance of Ms. Trueblood misgendering them to Mr. ████████ Henson Dep. at 41:25-42:15 (stating “clients and colleagues had concern about pronouns not being used”); *see also* Kelly Emails at 045 (noting that transgender staff were “continuously offended”).)¹¹

Turning to Accommodation One, this request would involve Ms. Trueblood offering not to work with clients who use preferred pronouns. This practice would treat

¹¹ Ms. Trueblood lodges boilerplate hearsay objections to certain evidence of pronoun misuse. (Pl. Reply at 6 (citing Def. Resp. at 14)); *see* Fed. R. Evid. 801(c)(2). “If the contents of a document can be presented in a form that would be admissible at trial—for example, through live testimony by the author of the document—the mere fact that the document itself might be excludable hearsay provides no basis for refusing to consider it on summary judgment.” *Sandoval v. Cnty. of San Diego*, 985 F.3d 657, 666 (9th Cir. 2021) (finding abuse of discretion, where district court sustained meritless hearsay objections at summary judgment, because “the objected-to documents either reflect the personal knowledge of individuals who could be called to testify at trial or will likely be admissible at trial under exceptions to the hearsay rule”); *see also* Fed. R. Civ. P. 56(c)(2) (“A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.”). Here, there is no reason to doubt that the challenged evidence could be presented in admissible form at trial through live testimony. (See Henson Dep. at 42:11-15 (Ms. Henson testifying that she was “aware of” concerns from clients and colleagues “about pronouns not being used”); ████████ Dep. at 28:23-25 (Ms. Trueblood’s attorney asking Mr. ████████ whether a transgender employee told him “about [Ms. Trueblood] misgendering [them],” and Mr. ████████ testifying affirmatively), 58:1-15 (Mr. ████████ testifying that a transgender colleague “reported” a misgendering incident to Ms. Williams).)

1 transgender clients differently and disadvantageously because the “offer” would not
2 extend to all clients; instead, it would target transgender clients solely on the basis of
3 gender identity. (Pl. Dep. at 93:14-94-10.) This, too, is discriminatory and therefore
4 accommodating this request would be an undue hardship for VCCC. *See Peterson*, 358
5 F.3d at 607; *Suarez*, 552 P.3d at 800. What is more, implementing Accommodation One
6 would require VCCC to: (1) identify clients’ preferred pronouns during the intake
7 process in order to proactively avoid pairing Ms. Trueblood with transgender clients; or
8 (2) permit Ms. Trueblood to, upon learning that a client uses preferred pronouns, either
9 suddenly begin using names only or cease working with the client entirely. (Def. MSJ at
10 18-19; Pl. Dep. at 94:11-16, 95:9-96-3.) Both options are discriminatory and would
11 invite potential liability under WLAD’s public accommodations provisions. The former
12 could result in harassment within the meaning of WLAD through “unwelcome personal
13 questions” about a clients’ gender identity, WAC 162-32-040(2)(a), when the topic
14 would not otherwise arise in the intake process (*see* Pl. Dep. at 94:11-16). The latter
15 would “alter” the clients’ healthcare experiences and continuity of care. WAC
16 162-32-040(3). (*See* Doc. Prod. at 19.) In the case at bar, the “single discriminatory act”
17 of removing M and C from Ms. Trueblood’s caseload certainly altered the clients’
18 healthcare experiences based on their pronoun usage and gender identities, possibly in a
19 manner that could give rise to liability under WLAD. *Floeting*, 434 P.3d at 43.

20 Put simply, VCCC could not grant the Disputed Accommodations without
21 discriminating against its transgender staff and clients, and without at least some danger

22 //

1 of liability under federal and state anti-discrimination law.¹² This is sufficient to
 2 establish undue hardship under long-standing Ninth Circuit precedent. *See Peterson*, 358
 3 F.3d at 607; *Bolden-Hardge*, 63 F.4th at 1225; *see also Suarez*, 552 P.3d at 800. But
 4 when considering the context of VCCC’s particular business as *Groff* directs, the
 5 hardship becomes even more acute. *See Groff*, 600 U.S. at 468, 470.

6 VCCC is a behavioral healthcare provider that exists to treat vulnerable people
 7 with complex mental health conditions and needs. (Henson Decl. ¶¶ 2-4.) VCCC’s
 8 clients include transgender youth who use preferred pronouns and struggle with intensive
 9 behavioral health issues specifically related to gender dysphoria, gender identity, and
 10 gender expression. (*Id.* ¶ 12.) VCCC also has transgender staff members who use
 11 preferred pronouns. (*Id.* ¶ 13.) *See Groff*, 600 U.S. at 472 (holding “co-worker impacts”
 12 are relevant to undue hardship where those impacts go on to affect the conduct of the
 13 business). Granting any of the Disputed Accommodations would have authorized
 14 discrimination on the basis of gender identity in a manner that denies transgender
 15 individuals “the authentic experience of who they are,” which “is extremely detrimental

16
 17 ¹² *See, e.g., Kluge*, 2024 WL 1885848, at *20-21 (concluding public school teacher’s
 18 “Last Names Only” religious accommodation posed undue hardship by placing the school on the
 19 “razor’s edge” of liability for sex discrimination under Title IX of the Education Amendments of
 20 1972 (quoting *Matthews v. Wal-Mart Stores, Inc.*, 417 F. App’x 552, 554 (7th Cir. 2011)); *see*
 21 *also Bostock*, 590 U.S. at 732 (Alito, J., dissenting) (“After today’s decision, plaintiffs may claim
 22 that the failure to use their preferred pronoun violates one of the federal laws prohibiting sex
 discrimination.”); *Doe v. Arizona*, No. CV-18-00384-PHX-GMS, 2019 WL 2929953, at *2-3 (D.
 Ariz. July 8, 2019) (declining to summarily dismiss Title VII hostile work environment claim
 that was premised in part on supervisor’s continuous misgendering of transgender employee);
Prescott v. Rady Childs.’ Hospital-San Diego, 265 F. Supp. 3d 1090, 1098-1100 (S.D. Cal.
 2017) (denying motion to dismiss civil rights claims under the Affordable Care Act and
 California law that were premised on hospital staff’s continuous misgendering of transgender
 youth patient).

1 to mental and behavioral health.” (██████ Dep. 61:8-12.) Accommodations that actively
2 harm VCCC’s transgender clients and staff would wholly undermine VCCC’s efforts to
3 provide “quality and recovery-oriented” gender-affirming care in pursuit of “healthy and
4 compassionate communities.” (Manual at 403.) Put differently, requiring VCCC to
5 inflict the very harm it aims to remedy is nothing short of antithetical to VCCC’s
6 “particular business” as a matter of common sense. *Groff*, 600 U.S. at 470-71; *see also*
7 *Kluge*, 2024 WL 1885848, at *17-20 (holding public school met *Groff* standard where
8 teacher’s “Last Names Only” accommodation unduly burdened school’s legitimate
9 mission to educate all students by “fostering a learning environment of respect and
10 affirmation” that is “equally open to all”).

11 Ms. Trueblood argues VCCC cannot show undue hardship because it failed to
12 consider possible alternative accommodations. (*See* Pl. Resp. at 1, 7, 12.) To be sure,
13 *Groff* “requires that an employer reasonably accommodate an employee’s practice of
14 religion, not merely that it assess the reasonableness of a particular possible
15 accommodation.” 600 U.S. at 473 (instructing that “[c]onsideration of other options”
16 “would also be necessary” in a case like *Groff*’s). Ms. Trueblood points to an email in
17 which Ms. Henson explains that pronoun usage “would need to be consistent in every
18 interaction” because otherwise, “it is discrimination on the basis of gender identity.”
19 (Henson Email at 492.) Ms. Trueblood construes this statement as an “admission” by
20 VCCC that it could have allowed her “to completely omit all pronouns” and refer to
21 everyone using names only. (Pl. Resp. at 7.) But this alternative is unworkable because
22 it does not eliminate the risk of liability for harassment in deliberately failing to use a

1 transgender colleague or client's preferred "form of address." WAC 162-32-040(2)(d).
2 Furthermore, this case is unlike *Groff* because Ms. Trueblood's religious beliefs could not
3 be easily accommodated by an alternative as obvious as "voluntary shift swapping." 600
4 U.S. at 473. As indicated, swapping cases with other parent partners based on the client's
5 gender identity is discriminatory and, in any event, does not resolve the religious conflict
6 stemming from Ms. Trueblood's opposition to using transgender employees' preferred
7 pronouns. (See Pl. Dep. at 96:4-21 (Ms. Trueblood acknowledging that she could not be
8 reassigned from staff meetings involving transgender co-workers); see also Pl. Resp. at 9
9 (Ms. Trueblood acknowledging that Accommodation One "may not have been a long
10 term workable solution").) VCCC did at least search for alternatives by asking Ms.
11 Trueblood "if there were any other options to address the situation." (Henson Decl.
12 ¶ 16.) Because no other options were acceptable to Ms. Trueblood (*id.* ¶¶ 14, 16), the
13 parties were at an impasse with no mutual path forward. Under these circumstances,
14 where only the Disputed Accommodations were acceptable to Ms. Trueblood, the court
15 concludes VCCC "carried its burden of showing that no reasonable accommodation was
16 possible." *Peterson*, 358 F.3d at 608.

17 Ms. Trueblood also argues VCCC denied the Disputed Accommodations due to
18 religious animosity. (Pl. MSJ at 23-25 (citing *Groff*, 600 U.S. at 472 ("If bias or hostility
19 to a religious practice or a religious accommodation provided a defense to a reasonable
20 accommodation claim, Title VII would be at war with itself."))).) In particular, Ms.
21 Trueblood argues "[t]he employee handbook is devoid of information on Title VII
22 accommodations for religious adherents" yet it "contains information on accommodating

1 those with disabilities” and “five separate policies” reflecting protections for LGBTQ+
2 individuals. (*Id.* at 24; *see* Pl. Reply at 8 (“Each decision maker showed animus towards
3 Ms. Trueblood’s religion in failing to account for her rights alongside rights of
4 [LQBTQ+] staff.”).) VCCC, however, does maintain a standard protocol to address
5 accommodation requests and it followed that protocol in Ms. Trueblood’s case. (Henson
6 Decl. ¶ 10; Doc. Prod. at 21.) This argument also deliberately overlooks the numerous
7 provisions throughout VCCC’s manual that prohibit workplace discrimination on the
8 basis of religion. (*See* Manual at 401, 404, 410, 423, 433.) Accordingly, no reasonable
9 juror could conclude that VCCC’s employee manual evidences hostility to Ms.
10 Trueblood’s faith. (*See generally id.* *Cf.* Pl. Notes at 2 (Ms. Trueblood noting Ms.
11 Williams “respected my religious beliefs”); Pl. Dep. at 182:16-19 (Ms. Trueblood
12 testifying she felt VCCC was “inclusive” of her religious beliefs for ten years).)

13 Finally, Ms. Trueblood argues the Ninth Circuit has “never” decided undue
14 hardship as a matter of law. (Pl. Resp. at 3; *see* Pl. Reply at 2.) This position is plainly
15 incorrect because courts regularly determine undue hardship as a matter of law, as
16 reflected in several cases that Ms. Trueblood herself cites. (*See* Pl. MSJ at 8 (citing
17 *Peterson*), 19 (citing *Bhatia*); Pl. Reply at 8 (citing *Berry*)); *Bhatia*, 734 F.2d at 1384
18 (affirming summary judgment in employer’s favor based on undue hardship); *Peterson*,
19 358 F.3d at 601 (same); *Berry*, 447 F.3d at 645, 655 (same); *see also Brown*, 2024 WL
20 2325058, at *15-16, *26 (granting employer’s motion for summary judgment based on
21 undue hardship); *Petersen v. Snohomish Regional Fire & Rescue*, No. C22-1674TSZ,
22 2024 WL 278973, at *7-8 (W.D. Wash. Jan. 25, 2024) (same).

1 In sum, VCCC establishes its undue hardship defense as a matter of law. Thus,
2 VCCC is entitled to summary judgment on Ms. Trueblood's failure-to-accommodate
3 claims under Title VII and WLAD.

4 **C. Retaliation**

5 Title VII prohibits an employer from discriminating against an employee because
6 the employee "opposed any practice" proscribed by Title VII. 42 U.S.C. § 2000e-3(a);
7 *see also Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 56 (2006). To evaluate
8 retaliation claims under Title VII, courts employ the burden-shifting framework
9 established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *Kama v.*
10 *Mayorkas*, 107 F.4th 1054, 1058-59 (9th Cir. 2024). Under that framework, the plaintiff
11 must first establish a *prima facie* case of retaliation by showing: (1) she engaged in an
12 activity protected under Title VII; (2) her employer subjected her to an adverse
13 employment action; and (3) there was a causal link between the protected activity and the
14 adverse employment action. *Id.* at 1059. If the plaintiff establishes a *prima facie* case,
15 the burden then shifts to the employer "to articulate 'some legitimate, nondiscriminatory
16 reason for the challenged action.'" *Id.* (quoting *Opara v. Yellen*, 57 F.4th 709, 723 (9th
17 Cir. 2023)). "If such a reason is asserted, then the burden shifts back to the plaintiff to
18 show that the asserted reason is merely a pretext for retaliation." *Id.*

19 The court first considers whether Ms. Trueblood has established a *prima facie* case
20 of retaliation under Title VII, then considers the balance of the *McDonnell Douglas*
21 burden-shifting framework.

22 //

1 1. Prima Facie Case

2 Ms. Trueblood fails to establish two essential elements of her *prima facie* case of
 3 retaliation: protected activity and causation.¹³ First, although the Ninth Circuit has not
 4 clarified whether requesting a religious accommodation constitutes protected activity,
 5 Ms. Trueblood fails to persuade this court that it does. “An employee engages in
 6 protected activity when she opposes an employment practice that either violates Title VII
 7 or that the employee reasonably believes violates that law.” *Westendorf v. W. Coast*
 8 *Contractors of Nev., Inc.*, 712 F.3d 417, 422 (9th Cir. 2013); *see also* 42 U.S.C.
 9 § 2000e-3(a). As the Eighth Circuit has recognized, “merely requesting a religious
 10 accommodation is not the same as opposing the allegedly unlawful denial of a religious
 11 accommodation.” *EEOC v. N. Memorial Health Care*, 908 F.3d 1098, 1102 (8th Cir.
 12 2018). Ms. Trueblood did not “oppose” allegedly unlawful activity by initiating the
 13 accommodations process. *Westendorf*, 712 F.3d at 422. In any event, the court rejects
 14 Ms. Trueblood’s attempt to significantly expand the scope of protected activity “[i]n the
 15

16 ¹³ Ms. Trueblood establishes an adverse employment action because her “termination
 17 plainly qualifies” as such. *Lakeside-Scott v. Multnomah Cnty.*, 556 F.3d 797, 803 (9th Cir.
 18 2009). Her corrective action disciplinary notice, which threatened “[a]dditional disciplinary
 19 steps, up to and including termination,” and eventually did result in termination, also constitutes
 20 an adverse employment action. (Corrective Action at 2); *see Ray v. Henderson*, 217 F.3d 1234,
 21 1243 (9th Cir. 2000) (“[A]n action is cognizable as an adverse employment action if it is
 22 reasonably likely to deter employees from engaging in protected activity.”); *Thomas v. Spencer*,
 294 F. Supp. 3d 990, 999 (D. Haw. 2018) (“Under Ninth Circuit law, a letter of reprimand may
 constitute an adverse employment action,” but in making this determination “the court must
 consider whether there was any employment consequence as a result of the reprimand letter.”).
 The removal of two gender nonconforming youth clients from her caseload, however, does not
 constitute an adverse action because VCCC’s decision to separate these clients from Ms.
 Trueblood aligned with her proposed accommodation “[t]o offer to not work with clients who
 use preferred pronouns.” (Request at 471.)

1 absence of express statutory directive or authority on point,” in accordance with at least
2 one other decision in this District. *Brown*, 2024 WL 2325058, at *19 (Rothstein, J.)
3 (declining to construe a request for accommodation as protected activity).

4 Second, Ms. Trueblood fails to establish a causal link between her accommodation
5 request and an adverse employment action. This element requires an employee to “show
6 that her protected conduct was a but-for cause—but not necessarily the only cause—of
7 her termination.” *Westendorf*, 712 F.3d at 422. An employee can establish a casual link
8 through direct or circumstantial evidence from which causation can be inferred, such as
9 an employer’s “‘pattern of antagonism’ following the protected conduct,” *Porter v. Cal.*
10 *Dep’t of Corr.*, 419 F.3d 885, 895 (9th Cir. 2005) (quoting *Kachmar v. SunGuard Data*
11 *Sys., Inc.*, 109 F.3d 173, 177 (3d Cir. 1997)), or the temporal proximity between the
12 protected activity and adverse action, *Villiarimo*, 281 F.3d at 1065. *See Coghlan v. Am.*
13 *Seafoods Co.*, 413 F.3d 1090, 1095 (9th Cir. 2005) (explaining that direct evidence
14 proves animus without inference or presumption and typically consists of “clearly”
15 retaliatory statements or actions, whereas circumstantial evidence “requires an additional
16 inferential step” to demonstrate animus).

17 Here, Ms. Trueblood appears to argue she experienced a pattern of antagonism
18 because she “was continually pressured to recant her beliefs and to use preferred
19 pronouns.” (See Pl. MSJ at 25.) Ms. Trueblood relies on a series of email threads in
20 which VCCC employees discuss her requested accommodations. (See *id.*) In one
21 internal email to Ms. Henson dated July 11, 2022, Ms. Kelly observed that “today [Ms.
22 Trueblood] misgendered frequently,” that VCCC has “transgender[] staff who are

1 continuously offended,” and then stated “I personally am saddened by [Ms. Trueblood’s]
2 stance.” (Kelly Emails at 483.) This email merely corroborates VCCC’s position that its
3 decision to discipline and terminate Ms. Trueblood was motivated by her continuous
4 misgendering of clients and staff, rather than her accommodation request. And this email
5 does not evidence any attempt to antagonize or pressure Ms. Trueblood regarding her
6 religious beliefs, as Ms. Trueblood was not copied on the message. (*See id.*)

7 Ms. Trueblood also cites email threads involving Ms. Henson and Ms. Boye as
8 evidence of causation. (Pl. MSJ at 25 (citing Tribbett Decl. ¶ 11, Ex. 16 (“Henson
9 Thread”); *id.* ¶ 12, Ex. 17 (“Boye Check In”)).) In one internal email, Ms. Henson states
10 “I am hoping [Ms. Trueblood] changes her mind, however if she does not, we need to
11 prepare to sort out the logistics.” (Henson Thread at 491.) Again, Ms. Trueblood was
12 not copied on this message (*see id.*), which simply reflects that Ms. Henson maintained
13 some level of optimism that Ms. Trueblood’s employment could continue. In a different
14 email, Ms. Boye follows up with Ms. Trueblood “offer[ing] to check in” if she wanted
15 “to talk through” next steps after VCCC denied the Disputed Accommodations, unless
16 she had “already made a decision” about how to proceed. (Boye Check In at 497-98.)
17 This email merely shows a supervisor making herself available to an employee to discuss
18 a difficult situation. Even when viewing the facts in the light most favorable to Ms.
19 Trueblood, no reasonable juror could conclude from either of these messages that VCCC
20 antagonized Ms. Trueblood by “continually pressur[ing]” her to recant her religious
21 convictions. (Pl. MSJ at 25.) Accordingly, the court can adduce no “pattern of
22 antagonism” that would support a causal link in this case. *Porter*, 419 F.3d at 895.

1 Ms. Trueblood also appears to argue that the temporal proximity between her
2 accommodation request and her disciplinary meeting and termination evidences
3 causation. (Pl. MSJ at 25-26 (arguing Ms. Trueblood “was given a corrective action
4 disciplinary notice” just “[o]ne day after her request for accommodation,” and that this
5 request ultimately “prompted her termination” a few weeks later).) This “inquiry is
6 fact-specific and depends on both the degree of proximity and what, if any, other
7 evidence supports an inference of” retaliatory motive. *Kama*, 107 F.4th at 1059-60.
8 “Even cases involving very close temporal proximity have generally featured
9 independent evidence of discrimination or retaliation.” *Id.* at 1060 (collecting cases).
10 “When there are equally likely causes of [a] [p]laintiff’s termination that arise during the
11 same period, temporal proximity does not establish” a retaliatory motive. *Id.* at 1061-62
12 (rejecting temporal proximity argument that “cut[] both ways” because there “was also a
13 close temporal link between Plaintiff’s noncooperation (the stated reason for the
14 termination of his employment) and the [employer]’s adverse action”).

15 Temporal proximity does not aid in establishing a causal link in this case. Ms.
16 Trueblood initially requested her accommodations by email on June 29, 2022, after
17 business hours at 7:17 P.M. (Request at 471.) The undisputed facts demonstrate Ms.
18 Trueblood knew at the time she sent this email that VCCC had already scheduled her
19 corrective action meeting to take place the following day. (Pl. Dep. 71:6-16; *see*
20 Corrective Action at 1 (dated June 30, 2022).) In fact, Ms. Trueblood requested
21 accommodations *because of* the imminent corrective action meeting. (*See* Pl. Notes at 3
22 (“I knew the Corrective Action meeting was the next day, so I sent a request for religious

1 accommodations to HR.”.) Under these circumstances, Ms. Trueblood cannot
 2 reasonably argue a “[o]ne-day” span between her accommodation request and
 3 disciplinary notice demonstrates that the former caused the latter. (Pl. MSJ at 25.)

4 Furthermore, the approximate two-and-a-half-week span between Ms. Trueblood’s
 5 accommodation request and termination does not show a causal link under the
 6 circumstances, where she offers no other evidence of retaliation. *See Kama*, 107 F.4th at
 7 1060. Although this time period is short, Ms. Trueblood’s temporal proximity argument
 8 “cuts both ways” because there is also a close temporal link between her misconduct and
 9 her termination. *Id.* Indeed, in the months, weeks, and days leading up to her
 10 termination, Ms. Trueblood consistently failed to follow her supervisors’ instructions
 11 regarding the Pronoun Protocol (*see, e.g.*, Corrective Action at 1); deliberately
 12 misgendered at least one youth client,¹⁴ in violation of VCCC’s Staff Principles and
 13 Cultural Competence Standards (*see* Staff Principles (requiring staff to “[r]espect client
 14 needs and preferences”); CCS Policy at 1 (requiring staff to coordinate family-oriented
 15 care plans “with client’s consent”); *see also* Pl. Dep. at 51:15-18, 68:16-22 (Ms.
 16 Trueblood acknowledging that misuse of preferred pronouns can be harmful and

17
 18 ¹⁴ Throughout her briefing, Ms. Trueblood denies that she ever deliberately used
 19 incorrect pronouns. (*E.g.*, Pl. Resp. at 1.) VCCC asserts Ms. Trueblood’s view of the facts “is
 20 demonstrably false.” (Def. MSJ at 2.) “When opposing parties tell two different stories, one of
 21 which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court
 22 should not adopt that version of the facts for purposes of ruling on a motion for summary
 judgment.” *Scott v. Harris*, 550 U.S. 372, 380 (2007). The court agrees with VCCC that the
 record blatantly contradicts Ms. Trueblood’s position, at least as to youth client M. (*See* Pl. Dep.
 at 59:18-61:5, 64:13-17 (Ms. Trueblood testifying that it was her idea to “only call M by the
 assigned or biological pronouns” and she made the “conscious choice” to do so, despite knowing
 that “M wanted to use they/them pronouns”); Pl. Notes at 3 (Ms. Trueblood stating it was her
 “intention” to use the pronouns M “was assigned at birth”).)

disrespectful)); and ultimately refused to commit to providing non-discriminatory services and treating all clients and staff equally, as required by VCCC's Compliance and Ethics Policy (*see* C&E Policy at 1) and the law (*see supra* § III(B)(2)(c)). Evidence of temporal proximity equally supports VCCC's stated reasons for terminating Ms. Trueblood (*see* Termination Letter at 500), and thus does not independently establish causation. *Kama*, 107 F.4th at 1061; *see Unt v. Aerospace Corp.*, 765 F.2d 1440, 1446 (9th Cir. 1985) ("An employee is not protected by Title VII when he violates legitimate company rules, knowingly disobeys company orders, disrupts the work environment of his employer, or willfully interferes with the attainment of the employer's goals.").

Accordingly, Ms. Trueblood neither establishes nor creates a triable issue as to her *prima facie* case of retaliation.

2. Nondiscriminatory Justification and Pretext

Even if Ms. Trueblood could establish a *prima facie* case of retaliation, her claim still fails under the remaining steps of the *McDonnell Douglas* burden-shifting framework. As noted, if a plaintiff meets her initial burden under *McDonnell Douglas*, the employer must then offer a legitimate, nondiscriminatory reason for the adverse employment action. *Kama*, 107 F.4th at 1059. If the employer does so, the burden shifts back to the plaintiff to demonstrate pretext. *Id.* A plaintiff can establish pretext either "directly, by showing that unlawful discrimination more likely [than not] motivated the employer," or "indirectly, by showing that the employer's proffered explanation is unworthy of credence because it is internally inconsistent or otherwise not believable." *Id.* (quoting *Opara*, 57 F.4th at 723). "When assessing the validity of an employer's

1 stated reason for its actions, the key is not whether the reason is ‘objectively false’ or
2 ‘baseless’ but whether the employer ‘honestly believed its reasons for its actions.’”
3 *Kama*, 107 F.4th at 1059 (quoting *Villarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054,
4 1063 (9th Cir. 2002)).

5 Here, VCCC offers legitimate, nondiscriminatory reasons for Ms. Trueblood’s
6 disciplinary notice and termination: to enforce its anti-discrimination policies, to avoid
7 violating the law, and to “protect its vulnerable LGBTQ clients and also its staff
8 members, both preventing a hostile work environment and supporting LGBTQ rights.”
9 (Def. MSJ at 22.) The record amply supports VCCC’s position, and “[c]ourts have
10 repeatedly acknowledged that this is a legitimate, nondiscriminatory justification for an
11 employer’s actions.” *Brown*, 2024 WL 2325058, at *13 (citing *Peterson*, 358 F.3d at 603
12 (“[E]fforts to eradicate discrimination against [LGBTQ individuals] in [the] workplace
13 [are] entirely consistent with the goals and objectives of our civil rights statutes
14 generally.”)); *id.* at *19. VCCC’s articulation of legitimate bases for its actions shifts the
15 burden to Ms. Trueblood to show pretext, which she fails to do.

16 The court begins its assessment of pretext by noting that Ms. Trueblood does not
17 identify or otherwise acknowledge the *McDonnell Douglas* burden-shifting framework in
18 her summary judgment motion. (*See* Pl. MSJ at 25-26 (Ms. Trueblood beginning and
19 ending her analysis of retaliation with the *prima facie* elements of that claim).) As a
20 result, she neglects to address pretext at any point until her reply brief (*see* Pl. Reply at
21 12-13; *see generally* Pl. MSJ; Pl. Resp.), which ordinarily would result in waiver, *Turtle*
22 *Island Restoration Network v. U.S. Dep’t of Com.*, 672 F.3d 1160, 1166 n.8 (9th Cir.

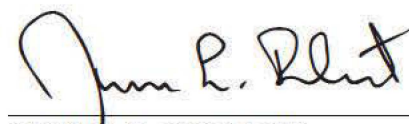
2012). Ms. Trueblood explains she declined to discuss pretext in her motion because in her view, “the entirety of the failure to accommodate framework addresses [the *McDonnell Douglas*] test.” (Pl. Reply at 12-13.) She then proceeds to argue her “termination was pretextual because no *per se* violation of the law had or would occur by using first names and omitting pronouns,” and any misuse of pronouns was not harassment because it was unintentional. (*Id.* at 13.) Even if the court were to accept Ms. Trueblood’s explanation and reach her untimely argument as to pretext, she misunderstands the relevant standard. All that matters is whether VCCC “honestly believed its reasons for its actions”—not whether those reasons ultimately prove lawful. *Kama*, 107 F.4th at 1059 (quoting *Villarimo*, 281 F.3d at 1063). On this record, even when viewing the facts in the light most favorable to Ms. Trueblood, VCCC easily meets that standard. No reasonable juror could conclude otherwise.

In sum, VCCC is entitled to summary judgment on Ms. Trueblood’s Title VII retaliation claim.

IV. CONCLUSION

For the foregoing reasons, the court DISMISSES the Doe Defendants (*see supra* at 18 n.8), DENIES Ms. Trueblood’s motion for partial summary judgment (Dkt. # 16), and GRANTS VCCC’s motion for summary judgment (Dkt. # 19). Ms. Trueblood’s claims, and this action, are DISMISSED with prejudice.

Dated this 28th day of August, 2024.



JAMES L. ROBART
United States District Judge